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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 586

STEWART BATA NASH, a minor, by JOSEPH TREADWAY NASH, his father as next friend,

Petitioner,

v.

N. V. NEDERLANDSCHE SCHOEN-EN LEDERFABRIEKEN BATA-BEST, a corporation organized under the laws of the Netherlands,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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Opinions Below

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered without opinion on May 16, 1964, and is printed at pages 31-32 of the petition. The judgment of the District Court, quashing an attachment of vested property and dismissing petitioner's complaint, appears at JA 22.*

* References to "JA " are to those portions of the Record which appear in the Joint Appendix printed for the use of the Court of Appeals. Nine copies of the Joint Appendix have been filed in this Court.

Jurisdiction

The jurisdictional requisites are set forth in the petition.

Question Presented

Whether, by an assignment expressly prohibited by valid regulation under the Trading With the Enemy Act, a non-resident alien, ineligible under § 32(f) of the Act to attach vested property about to be returned to the owner, may transfer to a United States citizen any interest in such vested property so as to enable the assignee to attach the vested property and assert against it the claim of the ineligible alien.

Statute and Regulation Involved

The pertinent provisions of §§ 32(a) and 32(f) of the Trading With the Enemy Act (50 App. U.S.C. §§ 1-40) and of the regulation prohibiting assignments of property vested under the Act (8 C.F.R. 505.1, 13 Fed. Reg. 9508 (1948)), are set forth at pp. 4-6 of the petition.

Statement

The property involved is the sum of $49,646.72, blocked in 1940 at the time of the German occupation of the Netherlands, vested in the Attorney General on June 28, 1951, and presently held in the Treasury of the United States. 5 Fed. Reg. 1677 (1940); 16 Fed. Reg. 6327 (1951); 28 Fed. Reg. 1594 (1963).

On February 20, 1963, the Attorney General (as successor to the Alien Property Custodian) published notice of intention to return the vested property to respondent ("Bata-Best").* The decision to return the property followed the filing of an appropriate and timely notice of claim for return by Bata-Best and determination by the Office of Alien Property that Bata-Best met the statutory conditions precedent for such return under section 32(a) of the Act.

After publication, but before the intended return could be made, petitioner filed a complaint in the District Court and caused a writ of attachment to be issued against the vested property under the provisions of section 16-301 of the District of Columbia Code (1961 ed.) (JA 2, 9).

The claimed statutory authority for the attachment of the vested property was section 32(f) of the Act, which permits citizens or residents of the United States, but not aliens, to attach vested property during a 30-day period after publication of the notice of intention to return but before return is made (JA 12).

On the strength of the attachment, petitioner obtained an order permitting service by publication upon Bata-Best (JA 16, 18). The attachment, and the substituted service based upon it, are the sole bases for the District Court's jurisdiction over Bata-Best (JA 16-17).

Petitioner Stewart Bata Nash, plaintiff below, is a four-year old citizen and resident of the United

* The statement in the Petition (p. 7) that the return was to be made to "petitioner" is mistaken.

States who sues by his father as next friend (JA 2, 5). The affidavit filed in support of the attachment states that the ground for petitioner's claim is that he is the "true and lawful owner" of the vested funds (JA 12). His claim of ownership, in turn, depends upon a purported transfer to him of "all right, title and interest to said property" by his grandfather, Jan Bata (JA 4).

Jan Bata is a citizen and resident of Brazil (JA 3, 6) who thus could not qualify in his own right as a person entitled to the benefit of the attachment provision of section 32(f).

During the years since 1951, when the property was vested, neither Jan Bata nor his infant assignee has ever filed a claim with the Office of Alien Property for return of the vested property (petition, p. 16).

Before answer, respondent Bata-Best moved pursuant to Rule 12(b), Fed. Rul. Civ. Proc., and D.C. Code section 16-307, to vacate and quash the attachment and to dismiss the complaint (JA 19-20). The ground for the motion was that the attachment was invalid, since it depended upon petitioner's claim of ownership of the attached vested property, and his claim of ownership depended upon an assignment which was invalid because it was both (a) prohibited by section 505.1 of the regulations under the Trading With the Enemy Act (8 C.F.R. § 505.1), and (b) an attempt to subvert the policy of the Act.

The District Court granted respondent's motion, quashed and vacated the attachment and dismissed the complaint. The Court of Appeals unanimously affirmed, without opinion.

ARGUMENT

This litigation concerns a unique attempt by a nonresident alien, Jan Bata, to circumvent established statutory procedures for proof of ownership of property vested under the Trading With the Enemy Act and for proof of eligibility under the Act for return of vested property. Although purportedly the owner of the vested property throughout the years since it was vested, Jan Bata, petitioner's assignor, never filed a claim for its return pursuant to § 32(a) of the Act and never brought suit pursuant to § 9(a) of the Act to enforce any such claim. Instead, after 12 years, and after the Attorney General had determined that the property should be returned to respondent Bata-Best, Jan Bata sought by the device of an assignment expressly prohibited by Regulation 505.1, continuously in effect since 1948, to place his claim in the hands of his infant grandson, an American citizen, in whose behalf the claim is now asserted as a basis for attaching the vested property and contesting ownership of it in the District Court.

On these facts, the District Court correctly quashed and vacated the attachment and dismissed petitioner's complaint. The Court of Appeals affirmed, *per curiam* and without opinion.

1. Nothing in the judgment below warrants review by this Court. The facts are peculiar to this case. There is no reported instance in which a similar attempt has been made by a litigant. In view of the diminishing activities of the Office of Alien Property, the question is unlikely to arise again.

Petitioner does not suggest, or attempt to suggest, any reason why the judgment of the Court of Appeals should be reviewed by this Court. Petitioner specifies no conflict between the judgment below and any decision of another Court of Appeals or of this Court, and there is none. He does not suggest that the court below departed from the accepted and usual course of judicial proceedings, and it did not. He specifies no important issue of Federal law decided below which should be reviewed by this Court, and there is none.*

In the absence of any showing by petitioner of a ground for review by this Court, his petition should be denied.

2. The judgment below was, in any event, manifestly correct. The sole jurisdictional basis for petitioner's suit against Bata-Best is the attachment of "$49,646.72 in the Treasury of the United States" (JA 12, 16). The sole basis for the attachment is petitioner's "true and lawful" ownership of the vested property (JA 12). Petitioner's claim of "ownership" is conceded to depend upon an assignment by Jan Bata purporting to transfer to appellant all of Jan Bata's "right, title and interest to said property" (JA 4, 18).

There is not the slightest doubt that this assign-

* The petition is a substantially verbatim repetition of petitioner's brief below, except that the word "petitioner" has been substituted for "appellant" and a spurious "question" has been added concerning a Treaty between Brazil and the United States, proclaimed in 1829, not mentioned in briefs or argument in the courts below and not discussed in the petition.

ment falls within the proscription of Regulation 505.1, which prohibits

> "Transactions, transfers, or other dealings in or relating to any property or interest that has been vested . . by the Attorney General. . . ."

The $49,646.72 here in suit unquestionably is "property . . . that has been vested . . . by the Attorney General." Vesting Order 17987 expressly declared the property "hereby vested." 16 Fed. Reg. 6327 (1951). The property will remain vested and under control of the Attorney General until the intended return is in fact made (JA 15).

It is equally beyond question that the assignment relied upon by petitioner to support his title to the vested funds, and to support his attempted attachment, was a "transfer" of vested property. The assignment itself purports to

> "transfer . . . that certain sum in the amount of $49,646.72 of my funds . . . which said sum has been released for repayment by the Attorney General. . . ." (JA 6)

Plainly, then, the assignment was a specific "transfer" of the specific "vested property" here in suit and thus repugnant to Regulation 505.1.

Regulation 505.1 is clearly authorized by section 5(b) of the Act, which empowers the President or his designee, under "such rules and regulations as he may prescribe", to

> "(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any

> acquisition [or] . . . transfer . . . of, or dealing in, . . . any property in which any foreign . . . national . . . has any interest,
>
> and any property or interest of any foreign . . . national . . . shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be . . . dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * *"

Thus, the regulation is in perfect harmony with the command of the statute.

Since the present assignment violated the prohibition against transfers of vested property, it could not operate to transfer to petitioner any valid claim to the vested property enforceable under the Act. See *Propper* v. *Clark*, 337 U.S. 472, 484 (1949); *Schumacher* v. *Brownell*, 210 F.2d 14, 18 (3d Cir. 1954). And since petitioner's only claim to the vested property—and thus the only basis for his attachment—depends upon that invalid assignment, the District Court and the Court of Appeals correctly concluded that the attachment must fail and, with it, jurisdiction over Bata-Best.

The regulation is not a mere technical bar to petitioner's claim; it effectuates a sound policy essential to the administration of the Act.

The purpose of section 32 of the Act, enacted in 1946, was to permit the return of vested property necessarily seized from residents of occupied countries, friendly neutrals, and Americans caught behind enemy lines. By this enactment, Congress granted authority to the President or his designee to make a discretionary return of such vested property upon a finding that a claimant was the owner of the property before its vesting, that he was not Axis-connected, and that such return was "in the interest of the United States." H. R. Rep. No. 1269, 79th Cong., 1st Sess. (1945); S. Rep. No. 1839, 79th Cong., 1st Sess. The administration of claims was "committed entirely to the discretionary judgment of the Executive branch 'without the intervention of the courts'." *Schilling* v. *Rogers*, 363 U.S. 666, 674 (1960).

Subsection 32(f) was intended to protect American creditors of foreign returnees by permitting them to subject vested property to their debt claims by attachment pursuant to local law.* As the House Committee on the Judiciary explained:

> "Subsection (f) is designed to permit American creditors to attach property about to be returned before it leaves the country." (1946 *U.S. Code Cong. Svc.*, p. 1107)

But while expressly recognizing the propriety of giving *American creditors* a chance to litigate their claims against alien returnees in a United States

* Absent such statutory authorization, attachments of vested property are prohibited by § 9(f) of the Act, which provides in part:

> "Except as herein provided, the money . . . paid to the Alien Property Custodian, shall not be liable to . . . attachment . . . ."

forum, Congress withheld any such special benefit from non-resident aliens and declined to open the courts of the United States to disputes between aliens not ordinarily to be litigated here.

Moreover, this limited proviso for the benefit of American creditors can in no way be construed as permission to any person, American or alien, to enforce a claim of *ownership* of vested property by attachment proceedings under section 32(f). All ownership claims, including those by Americans (1946 *U.S. Code Cong. Svc.*, pp. 1101, 1102), are required by the Act to be filed and determined under sections 9 or 32(a). Yet this untenable construction is precisely what petitioner seeks in the case at bar.

The present suit is in substance an effort by a non-resident alien to circumvent statutory procedure and enlarge the carefully limited privilege of attaching vested property about to be returned. The device is a gratuitous assignment of an unfiled claim of *ownership* from a non-resident alien—ineligible himself to attach the vested property—to his infant grandson, a United States citizen.

The regulation prevents such attempted subversion of the statute. It operates to freeze ownership of vested property as of the date of vesting, and thus serves equally the purposes of sections 32(a) and 32(f). It prevents transfers of vested property from persons ineligible for return to persons who might qualify for return. It also prevents transfers of claims against returnees from persons ineligible to make attachments under provisions of section 32(f) to persons eligible to invoke those provisions. Thus, the

regulation protects both the Congressional purpose and the statutory scheme.

The courts below, therefore, correctly held that the assignment in violation of the regulation could not serve as a basis for petitioner's attachment. The assignment upon which petitioner's action was founded constituted an attempt to circumvent the policy of the Trading With the Enemy Act and was directly contrary to a valid regulation issued under that Act. As both courts below concluded, such an assignment did not transfer to petitioner an interest enforceable under the Act. Accordingly, there was no basis for jurisdiction over respondent Bata-Best and petitioner's complaint was properly dismissed.

Conclusion

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted.

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